

The San Francisco Fair Chance Ordinance for Employers and City Contractors

Frequently Asked Questions

The Fair Chance Ordinance (FCO), codified at Article 49 of the San Francisco Police Code and Chapter 12T of the San Francisco Administrative Code, takes effect on August 13, 2014. The ordinance regulates employers' and City contractors' use of arrest and conviction records when making employment decisions regarding individuals who perform, or who will perform, work in San Francisco. It also regulates affordable housing providers' use of arrest and conviction records of applicants for, or residents in, affordable housing. The City's Human Rights Commission (HRC) has authority to implement the housing provisions of the FCO.

These FAQs pertain only to the employer and City contractor requirements of the FCO. Please contact HRC at (415) 252-2500, or visit their web site, <http://sf-hrc.org/article-49-san-francisco-police-code-fair-chance-ordinance>, if you have questions regarding the applicability of the FCO to affordable housing providers.

The Office of Labor Standards (OLSE) is responsible for administering and enforcing this ordinance. OLSE also provides technical guidance to employers, employees, and job applicants.

This document addresses some of the most common questions about the Fair Chance Ordinance. If you have a question not covered by the FAQs, please contact OLSE at 415-554-5192 or email fce@sfgov.org.

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A. OVERVIEW OF THE ORDINANCE

1. What is the Fair Chance Ordinance?

The Fair Chance Ordinance (FCO) goes into effect on August 13, 2014 and imposes restrictions on criminal history inquiries on certain employers, affordable housing providers, and City contractors. The FCO's requirements for employers and affordable housing providers are codified in Article 49 of the San Francisco Police Code. The FCO's requirements for City contractors and subcontractors, including lessees, are codified in Chapter 12T of the San Francisco Administrative Code (see FAQ Section M). OLSE implements the employer and contractor provisions of the FCO, which are addressed in these FAQs. The San Francisco Human Rights Commission ("HRC") implements the provisions regarding affordable housing providers. For information regarding the housing provider provisions of the FCO, please contact the HRC at (415) 252-2500, or visit their web site, <http://sf-hrc.org/article-49-san-francisco-police-code-fair-chance-ordinance>

2. What does the Fair Chance Ordinance require of employers?

The FCO regulates the use of arrest and conviction records in employment decisions. The ordinance:

- Prohibits employers from issuing job ads or solicitations stating that persons with arrests or convictions may not apply or will not be considered for employment.
- Prohibits questions about, seeking records of, or consideration of, the following six categories of information *at any time* in the interview or hiring process: (1) an arrest not leading to a conviction, except for unresolved arrests, (2) participation in a diversion or deferral of judgment program, (3) a conviction that has been dismissed, expunged otherwise invalidated or otherwise inoperative, (4) a conviction, determination or adjudication in the juvenile justice system, (5) a conviction that is more than 7 years old, and (6) an offense other than a felony or misdemeanor, such as an infraction.
- Prohibits questions about conviction history or unresolved arrests until after an employer has either conducted a live interview with the applicant, or made a conditional offer of employment to the applicant.
- Requires the employer to provide the applicant with a copy of OLSE's FCO Notice before inquiring about conviction history or unresolved arrests.
- Requires the employer to conduct an individualized assessment if he/she intends to make an employment decision based on an unresolved arrest or conviction history.

- Requires that the employer give the applicant an opportunity to explain or correct an unresolved arrest or conviction history, as well as to provide any evidence of rehabilitation or mitigating factors.
- Requires the employer to delay any adverse action and reconsider the action if the applicant provides evidence of rehabilitation, mitigating circumstances factors or inaccuracies in the report.
- Requires the employer to inform the applicant if he/she decides to take an adverse action based on the applicant's unresolved arrest or conviction history.

3. When does this ordinance take effect?

August 13, 2014.

4. Does the ordinance impact existing state and federal laws relating to arrest and conviction records?

No. Employers, housing providers, and contractors must still follow state and federal law regarding criminal background checks. If there is a conflict, state and federal requirements supersede the FCO's requirements. State and federal law mandate criminal background checks in certain industries. Please note that OLSE does not advise on federal or state laws. If you have questions about the applicability of federal or state law, please consult with legal counsel.

5. Does the FCO require employers to give preference to, or hire, an unqualified individual with an arrest or conviction record?

No.

6. Does the FCO limit employers' ability to choose the most qualified and appropriate candidate among the applicants?

No.

7. Does the FCO require employers to conduct a background check?

No. Nothing in this ordinance requires employers to inquire into conviction histories, to conduct background checks or to base employment decisions on conviction histories.

This ordinance only applies to employers who choose to inquire into an applicant's or employee's conviction history or run background checks for applicants or employees.

B. WHO IS AFFECTED

8. Does this ordinance apply to all employers, and City contractors?

Employers: The FCO applies to private employers that are located or doing business in San Francisco, and that employ 20 or more persons worldwide. This 20-person threshold includes owner(s), management, and supervisory employees. Job placement, referral agencies, and other employment agencies are considered employers. The City and County of San Francisco, any other local governmental unit, or any unit of the state or federal government are not covered by the FCO.

City Contractors: See [Section M](#) below.

9. Does this ordinance apply to employers that are not based in San Francisco?

Yes. The FCO applies to employee positions located within San Francisco, regardless of where the employer is located, as long as the position is “in whole, or in substantial part, within the City.” OLSE interprets “in substantial part” to mean an average of 8 hours of work performed a week in San Francisco.

Example: A company is based in Australia and employs 19 people in Australia and 1 person in San Francisco. Because the company employs 20 or more people total, and is doing business in San Francisco, the FCO applies to the 1 employee who is working in San Francisco.

10. If an employee living in San Francisco telecommutes from his/her home for a company located outside San Francisco, is that position covered?

Yes, if the employee is working at least 8 hours a week in San Francisco, and the company employs at least 20 people anywhere, the position is covered.

11. Does this ordinance apply to employment decisions regarding independent contractors?

Yes. The FCO defines employment broadly to include temporary, seasonal, part-time, contract, contingent, and commission-based work. It also covers work performed through the services of a temporary or other employment agency, and any form of vocational or educational training—with or without pay.

12. How does an employer determine whether a position will be “in substantial part within the city?”

OLSE interprets “in substantial part” as working an average of 8 hours per week in San Francisco. An employer may look to previous years to determine if a position will involve an average of 8 hours of work a week in San Francisco. If the position or employer is new,

the employer should evaluate the job description and the work that is expected of that position, before making a reasonable, good faith determination as to whether the position would fall within the 8 hours per week average and thus be covered under the FCO.

13. When an employer uses a third-party recruiting firm for hiring, who is responsible for compliance—the employer or the recruiting firm?

If an employer hires a third party recruiting firm to conduct all or part of the hiring process, the employer is responsible for ensuring that the provisions of the FCO are complied with and will be held liable for any violations of the FCO.

14. When an employer uses a temporary staffing agency, professional employer organization, or similar entity to employ people, who is responsible for compliance—the employer or the staffing agency?

Both the employer and the staffing agency must comply with the ordinance, and both may be held responsible for compliance with regard to particular employee(s). As defined in FCO, an employer also includes job placement, referral agencies and other employment agencies.

C. EMPLOYERS' NOTICE REQUIREMENTS: JOB POSTINGS AND SOLICITATIONS

15. What are the FCO's requirements for job postings and solicitations?

Employers covered by the FCO must include in all job ads or solicitations, that are reasonably likely to reach persons who are reasonably likely to seek employment in San Francisco, a statement that the employer will consider qualified applicants with criminal histories in a manner consistent with the requirements of the FCO. Here's an example of a statement that would satisfy this requirement: "Pursuant to the San Francisco Fair Chance Ordinance, we will consider for employment qualified applicants with arrest and conviction records."

An employer may not disseminate any job solicitation or advertisement that expresses—directly or indirectly—that any person with an arrest or conviction record will not be considered for employment, or may not apply for employment. As a result, job ads that state "no felons," or "no criminal history allowed," are not permitted.

Similarly, language in a job ad such as "a background check must be passed," can be construed to mean the employer will exclude any applicant with an arrest or conviction record. Instead, the employer should wait until after conducting a live interview with the applicant, or making the applicant a conditional offer of employment, to conduct or obtain a background check.

16. Does an online job posting have to include information about the FCO?

Yes, the required statement discussed in [Question 15](#) applies to all solicitations and advertisements, including online job postings.

17. Some large employers use a single job application form, provided to all applicants, regardless of whether an applicant is applying for a job in San Francisco or in Dallas. Can the form include a question about an applicant's arrest and conviction record, with a disclaimer that if the applicant is applying for a position in San Francisco, he/she should skip that question?

You should consider omitting this question from the form. By leaving the question in the application, the employer runs the risk that an applicant will inadvertently provide arrest and conviction information, and that the employer will improperly consider such information.

Otherwise, it would be preferable to use a separate job application form for San Francisco positions to ensure compliance with the FCO. Alternatively, employers could disable the answer field for any such question in electronic applications.

If an employer chooses to use a single application form, then it should include a clear and conspicuous disclaimer next to the question instructing applicants for San Francisco positions not to answer that question.

18. An employer has a "Now Hiring" sign or sticker in its store front. It does not say anything other than "Now Hiring." Does the sign or sticker have to include information about the FCO?

No. OLSE interprets the FCO notice requirement as applying to job postings, solicitations, or advertisements with more substantive content than a simple "Now Hiring" or "Help Wanted" window sign with no substantive content.

D. EMPLOYERS' POSTING REQUIREMENT

19. What is the employer's posting requirement?

The FCO requires OLSE to publish and make available to employers a notice about employee rights under the FCO (referred to herein as the "OLSE FCO Notice"). The OLSE FCO Notice is available on our website.

Employers must post the OLSE FCO Notice in a conspicuous location at every workplace, job site, or other area in San Francisco under the employer's control that is frequently visited by their employees or applicants. Employers may comply with this requirement by posting the notice in the employee break room or on the company notice board. Employees and applicants must be able to readily access this notice.

Employers must also send a copy of the OLSE FCO Notice to each labor union or representative of workers that they have a collective bargaining agreement or other agreement of understanding with, and that is applicable to employees in San Francisco.

20. Are employers required to post the OLSE FCO Notice in languages other than English?

Yes. Employers must post the notice in English, Spanish, Chinese, Tagalog and any other language spoken by 5% or more of the employees in the workplace, job site, or other location.

OLSE has published translations of the notice in Chinese, Spanish, and Tagalog on its website. Employers are responsible for providing posters in any other language spoken by at least 5% of the employees at the workplace or jobsite.

21. If a company does business in an industry that is subject to federal or state regulations requiring criminal history screenings for certain employees, is that company still subject to the FCO's notice and posting requirements?

It depends. As noted in [Question 4](#), the FCO contains a preemption provision making clear that if a federal or state law has a criminal history requirement that conflicts with the FCO, the federal or state requirement supersedes the FCO. (See Police Code Sec. 4916, Admin. Code Sec. 12T.9). If federal or state law requires a criminal background check for a particular position in your company that conflicts with the FCO, then the FCO, including the notice and posting requirements, do not apply to that particular position and its applicants. However, if the company has other positions that are not governed by superseding federal or state law—and which are therefore subject to the FCO—then the company must comply with the FCO notice and posting requirements with respect to those positions and those applicants.

E. ASKING ABOUT ARREST AND CONVICTION RECORDS ON APPLICATIONS

22. Can an employer ask about arrest and conviction records on a job application?

No. An employment application may not contain any inquiry into an applicant's arrest and conviction records. An employer can only ask about an applicant's unresolved arrest or conviction history after the employer has either (1) conducted a live interview with the applicant, or (2) made a conditional offer of employment to the applicant. Even then, the six categories of information that are designated as OFF LIMITS by the ordinance can never be asked about, sought out, or considered by an employer under any circumstances, at any stage of the hiring process. Please see [Question 26](#) for the six categories of "Off Limits" information.

23. Can an employer ask about arrest and conviction records on an application if they don't use the information until after they interview the employee?

No. Section 4904(b) of the FCO prohibits employers from requiring applicants to disclose on a job application the fact or details of any Conviction History, any Unresolved Arrest, or any of the six “off-limits” categories. The law only permits an employer to inquire about an applicant’s unresolved arrest or conviction history after the employer has either (1) conducted a live interview with the applicant, or (2) made a conditional offer of employment to the applicant.

24. Can an employer run a criminal background check on a job applicant?

Yes, but WHEN and HOW an employer can conduct a background check on an applicant is regulated by the FCO. Please see [Questions 30 and 31](#).

F. USING ARREST AND CONVICTION RECORDS IN EMPLOYMENT DECISIONS

25. Can an employer ever ask an applicant about his/her arrest or conviction record?

The FCO does not completely bar employers from asking about applicants’ unresolved arrest or conviction history. Instead, the FCO limits WHEN and HOW an employer may ask about an applicant’s conviction history and unresolved arrests. However, the six categories of information identified as OFF LIMITS in Section 4904(a) can never be asked about, sought out, or considered by an employer under any circumstances, at any stage of the hiring process.

26. What information is OFF LIMITS to employers?

The following information is OFF LIMITS, meaning it can never be asked about, sought out, or considered by an employer under any circumstances, at any stage of the hiring process: .

- An arrest not leading to a conviction—except under specific circumstances identified below with respect to an unresolved arrest;
- Participation in, or completion of, a diversion or a deferral of judgment program;
- A conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise made inoperative;
- A conviction or any other determination in the juvenile justice system, or information regarding a matter considered in, or processed through, the juvenile justice system;
- A conviction that is more than 7 years old (measured from the date of sentencing); or
- A criminal offense other than a felony or a misdemeanor—such as an infraction.

27. What is an unresolved arrest?

An unresolved arrest is an arrest that is undergoing an active pending investigation or trial that has not yet been resolved. (See Police Code Section 4903). An arrest is resolved once the individual is released with no charges filed against him/her, or if the charges have been dismissed or discharged by the district attorney or the court. Unresolved arrests may be considered by employers, *if and only if* the unresolved arrests are directly related to the individual's ability to do the job and they are less than 7 years old. An employer's consideration of an unresolved arrest must be part of an individualized assessment (see Q33).

28. It is off-limits for an employer to ask about a conviction that is more than 7 years old. Is the 7 years counted from when the person started or finished serving a sentence?

The 7 years is counted from the date of conviction, which the FCO defines as the date of sentencing. So, if the date of sentencing was more than seven years ago, information about this conviction is OFF LIMITS, regardless of when the person finished serving the sentence.

29. When can an employer ask about an applicant's unresolved arrest or conviction history?

An employer can ask about an applicant's conviction history or unresolved arrests only *after* the employer has either (1) conducted a live interview with the applicant (via phone, videoconferencing, other technology, or in-person), or (2) made a conditional offer of employment to the applicant.

30. At what point can an employer run a criminal background check on an applicant?

A criminal background check is permissible following a live interview or after an offer of employment has been made. However, when making a criminal history inquiry, the employer must follow the steps outlined in [Question 31](#) below, and the criminal background check may not ask for, or consider, any of the six categories of "Off Limits" information set forth in Section 4904(a)(1)-(6). The employer must also comply with all state and federal requirements including, but not limited to, those in the California Investigative Consumer Reporting Agencies Act (ICRAA) and the Federal Consumer Reporting Act (FCRA).

31. What steps must employers follow when they inquire about an applicant’s unresolved arrest or conviction history?

After an employer has conducted a live interview with the applicant or made a conditional offer of employment to the applicant, the employer may ask about the applicant’s unresolved arrest or conviction history.

If	<i>Prior to that, the employer must</i>
An employer intends to ask about an applicant’s unresolved arrest or conviction history	Give the applicant a copy of OLSE’s official FCO notice. We recommend that employers do so at the start of the hiring process.
An employer intends to obtain a background check report on an applicant	(i) Comply with all state and federal requirements (including ICRAA and FCRA); and (ii) notify the applicant that such a report is being sought
An employer intends to make an employment decision based on an applicant’s unresolved arrest or conviction history	Conduct an individualized assessment
An employer intends to deny employment or take other adverse action because of an applicant’s unresolved arrest or conviction history	(i) Give the applicant a copy of the background check report (if any) and explain to the applicant which aspect of his/her unresolved arrest or conviction history is motivating the adverse action; (ii) Give the applicant at least 7 days to inform the employer that there are inaccuracies in the unresolved arrest or conviction record, or that there is evidence of rehabilitation or other mitigating factors; (iii) Delay any adverse action for a reasonable period and reconsider the adverse action if the applicant provides information under (ii); and (iv) Hold the position open during this process.

If, after all the steps laid out above, an employer decides to take an adverse action, the employer must inform the applicant of his/her final adverse action decision.

32. What is an adverse action?

An adverse action is one that deprives or tends to deprive this individual of employment opportunities. Examples of adverse actions include, but are not limited to: failing or refusing to hire an individual, discharging an individual, or not promoting an individual.

33. An employer must conduct an individualized assessment when making an employment decision based on the applicant's conviction history. What is an individualized assessment?

An individualized assessment requires the employer to consider only "directly-related convictions." A directly-related conviction is one where the conduct for which the applicant was convicted, or is the subject of an unresolved arrest for, "has a direct and specific negative bearing" on that person's ability to do the job.

In determining whether a conviction or unresolved arrest is directly-related, an employer must consider:

- Whether the employment position offers the opportunity for the same or similar offense to occur; and,
- Whether circumstances leading to the conduct for which the person was convicted will recur in the employment position.

In addition to the requirement that an employer only consider directly-related convictions, an employer must also consider:

- How much time has elapsed since the conviction or unresolved arrest;
- Evidence of inaccuracies in the applicant's conviction history;
- Evidence of the applicant's rehabilitation; and,
- Other mitigating factors.

34. As part of the individualized assessment, an employer must consider evidence inaccuracies in the record, evidence of an applicant's rehabilitation or other mitigating factors. What constitutes evidence of an applicant's rehabilitation, and what kind of mitigating factors can an applicant choose to provide?

Evidence of rehabilitation includes, but is not limited to:

- an applicant's satisfactory compliance with all terms and conditions of parole and/or probation (the applicant's inability to pay monetary damages should not be considered);
- employer recommendations (especially with respect to the applicant's post-conviction employment);

- educational attainment or vocational and professional training since the conviction (including education or training received while incarcerated);
- completion of, or active participation in, rehabilitation programs—such as alcohol or drug treatment;
- letters of recommendation from community organizations, counselors, case managers, teachers, community leaders, or parole and probation officers who have observed the applicant since a conviction; and,
- the age at which the applicant was convicted.

An applicant may choose to volunteer evidence of mitigating factors. These include, but are not limited to:

- the existence of coercive circumstances
 - intimate physical or emotional abuse
 - untreated substance abuse that contributed to the conviction
 - untreated mental illness that contributed to the conviction
- Evidence of inaccuracy, rehabilitation, or other mitigating circumstances may be provided orally or in writing.

35. What steps must an employer follow if he/she intends to deny employment or take other adverse action because of an applicant’s unresolved arrest or conviction record?

An employer who intends to take an adverse action based on an applicant’s unresolved arrest or conviction record(s) must (1) give the applicant a copy of the background check report (if any) and explain to the applicant which aspect of his/her unresolved arrest or conviction record is motivating the adverse action; (2) give the applicant at least 7 days to inform the employer orally or in writing that there are inaccuracies in the unresolved arrest or conviction record, or that there is evidence of rehabilitation or other mitigating factors; (3) delay any adverse action for a reasonable period and reconsider the adverse action if the applicant provides information under (2); and(4) hold the position open during this process.

36. An employer must delay an adverse action for a reasonable period and reconsider his/her decision if the applicant provides evidence of inaccuracies in the unresolved arrest or conviction record, or evidence of rehabilitation or mitigating factors. What constitutes a “reasonable period?”

What constitutes a “reasonable period” will usually depend upon the specific circumstances of the applicant, the position, and the employer. Factors for determining reasonableness may include the amount of mitigating evidence submitted by the applicant, the average length of time that the employer spends in selecting a candidate, and the urgency with which a position must be filled.

In general, a reconsideration period will likely be reasonable if it gives the employer an opportunity to conduct a new individualized assessment that takes into account all additional information.

37. Does the FCO apply to current employees or just job applicants?

The requirements of the FCO apply to (1) applicants, (2) potential applicants for employment, and (3) employees. The requirements apply not only to the hiring process for new applicants but also to employment-related decisions for existing employees. For example, the prohibition on inquiring into the six areas that are “off-limits” during the hiring process for a new employee (Q26) also apply to existing employees; an employer may not base any adverse action for an existing employee on those six “off-limits” categories. As another example, the procedures an employer must follow when basing an adverse action on information in an unresolved arrest or conviction record (Q33 - Q35) also apply to current employees.

G. EMPLOYER RECORD-KEEPING REQUIREMENTS

38. What records do employers need to maintain and retain to be in compliance with the FCO?

Employers must maintain and retain, for a period of three years, records documenting compliance with the FCO. Examples of records documenting compliance include but are not limited to:

- documentation showing that the OLSE FCO Notices were posted as required
- any background check reports obtained
- copies of job ads and postings
- job application forms distributed
- job applications submitted by applicants
- documentation of employment interviews including forms, notes, and interview questions
- any information provided to applicant regarding potential adverse action
- any information received from an applicant or employee in response to a background check
- documentation of all individualized assessments conducted
- any documentation of rehabilitation or mitigating factors submitted by applicants or employees
- documentation of adverse actions based on unresolved arrest or conviction records

- documentation of hiring or promoting individuals after considering unresolved arrest or conviction records

39. What happens if an employer fails to maintain and retain adequate records?

An employer that fails to maintain or retain adequate records documenting compliance with the FCO, or does not allow OLSE reasonable access to such records, is presumed to have violated the FCO, absent clear and convincing evidence otherwise.

H. EMPLOYER REPORTING REQUIREMENTS

40. Is the employer required to report on its compliance with the FCO to the OLSE?

Yes. Employers are required to submit an annual reporting form to OLSE. This form will be available on the OLSE website annually.

I. PROTECTED RIGHTS

41. What rights are protected under the FCO?

Besides the rights discussed above, an individual has the right to:

- file a complaint about an employer's alleged violation of the ordinance
- inform any person about an employer's alleged violation of the ordinance
- cooperate with the OLSE or other persons in the investigation or prosecution of any alleged violation of the ordinance
- oppose any policy, practice, or act that is unlawful under the ordinance
- inform any person of his/her rights under the ordinance

This list of rights is not exhaustive.

Note that it is unlawful for an employer to interfere with, restrain, or deny the exercise of—or attempt to exercise—any right protected under the ordinance.

42. Can an employer retaliate against an individual for exercising his/her rights under the FCO?

No. It is unlawful for an employer to (1) refuse to hire an applicant, or (2) discharge, threaten to discharge, demote, suspend or otherwise take adverse action against an individual in retaliation for exercising his/her rights under the FCO

Taking an adverse action against an individual within 90 days of the individual exercising his/her rights under the FCO creates a rebuttable presumption that the employer took such action in retaliation for exercise of those rights. The employer will then bear the burden of demonstrating that the adverse action was taken for a legitimate, non-retaliatory business reason.

J. FILING A COMPLAINT

43. What do I do if I believe an employer is violating the FCO?

If you have questions about your rights under the FCO, or believe an employer may be violating the FCO, please contact the OLSE at 415-554-5192 or email FCE@sfgov.org.

44. Will my complaint be kept confidential?

OLSE will strive to keep your identity confidential, and will not affirmatively reveal your identity unless you so authorize. However, due to the nature of the FCO inquiry, you should keep in mind that it is possible for an employer to speculate on a complainant's identity.

If you believe an employer has violated the FCO, but are fearful of possible retaliation, please call the OLSE at 415-554-5192. We will discuss your concerns in full confidence.

K. ENFORCEMENT AND PENALTIES

45. What happens if OLSE determines that an employer has violated the FCO?

OLSE may issue a determination of violation and order any appropriate relief.

Violation of the FCO	Action taken by OLSE
First violation OR any violations that occur between August 13, 2014 and August 13, 2015	(i) OLSE issues warnings and notices to correct. (ii) OLSE offers the employer guidance on complying with the FCO.
Second violation	OLSE imposes an administrative penalty of up to \$50 for each individual whose rights were violated or continue to be violated by the employer.
Subsequent violations	OLSE imposes an administrative penalty of up to \$100 for each individual whose rights were violated or continue to be violated by the employer.

OLSE may also bring a civil action against the employer. Upon prevailing, available remedies include: reinstatement, back pay, benefits and pay unlawfully withheld, liquidated damages of \$50 per individual for each day that the individual's rights under this ordinance were violated, injunctive relief, and attorney's fees and costs.

Note that all remedies, penalties, and procedures provided in this ordinance are cumulative. Further, OLSE or the court will award interest on all amounts due and unpaid at a rate specified by California Civil Code § 3289(b). This rate is currently set at 10% per annum.

L. WORKING WITH THIRD PARTIES

46. A company uses a third party entity to run background checks on applicants. What are the company's obligations under the FCO?

The company must ensure that the third party entity complies with all of the FCO restrictions that apply to background checks as set forth above in [Questions 30 and 31](#) above.

M. APPLICATION TO CITY CONTRACTS

47. How does the FCO affect employers who have contracts with the City and County of San Francisco?

The FCO (SF Administrative Code Chapter 12T) applies to companies with contracts or leases with the City and County of San Francisco, *regardless of the size of the company*. These companies must comply with the FCO with respect to applicants and employees who would be performing, or are performing, work within San Francisco in furtherance of the contract or lease. The FCO applies equally to subcontractors and subtenants.

48. What kind of City contracts are covered under the FCO?

- Public Works contracts
- Contracts for goods or services
- Grants
- Property contracts for use of real property for a term exceeding 29 days in a calendar year, including leases and certain permits

49. What contracts are excluded under the FCO?

- Legal settlements and contracts for urgent litigation expenses
- Contracts for less than \$5,000 a year
- Revocable at-will use or encroachment permits for use of City property for non-profit activities
- Street construction permits subject to eminent domain
- Permits to exercise First Amendment rights

50. Does the FCO cover contracts with employers who have fewer than 20 employees?

Yes. Contractors are covered regardless of the size of company.

51. Does the FCO cover contractors based outside of San Francisco?

Yes. The FCO applies to employee positions within San Francisco, regardless of where the contractor is located. As long as a position is “in substantial part within the city”—meaning an average of 8 hours of work performed a week in San Francisco, in furtherance of the contract—the FCO applies.

52. What does the FCO require of City contractors?

City contractors are required to follow all the same procedures concerning inquiry into and use of arrest and conviction records as employers covered under Police Code Article 49. All of the requirements laid out in these FAQs apply equally to City contractors.

53. What happens if OLSE determines that a contractor has violated the FCO?

The same penalties for noncompliance that apply to employers in general would also apply to contractors (see Q45). In addition, violation of this ordinance is considered a material breach of the contract. The contracting department may withhold funds due to the contractor, or terminate or suspend the contract. The department can deem the contractor an irresponsible bidder and bar the contractor from bidding on contracts for two years.